TOWN OF CHESTERFIELD, NH ZONING BOARD OF ADJUSTMENT

MINUTES May 14, 2013

Present: Chairman Burt Riendeau, Andy Cay, Harriet Davenport, Renee Fales, John Perkowski, Alternates Lucky Evans, Kristin McKeon and Selectmen's representative and Alternate Jim Larkin

The Zoning Board of Adjustment met for a site visit at the Paquette property at 6:30 pm. The Board reconvened at the Chesterfield Town Offices at 7:30 pm. Riendeau explained the process of the meeting.

1. Charles & Patricia Paquette represented by James Phippard of Brickstone Land Use Consultants and Michael Bentley, request a Variance from Article 203.5C Rear Setback, 203.6b Side Setback and Article 503.1 Expansion of a Non-Conforming Structure to add a dormer and 2nd floor balcony on the existing building with an increase of approximately 854 cubic feet (amended to 742 cf). The property is located at 31 South Shore Rd, Spofford (Map 5A Lot B13) Residential/Spofford Lake District. Continued to the site from March 19th.

Board met at the Paquette property at 6:30 pm. Jim Phippard presented revised plans reflecting the roof pitch changed to 3/12 to comply with the building codes. Because of the change the cubic expansion is reduced from 854 cf to 742 cf. This would be a total increase of 3.44% in volume.

Phippard presented pictures that were taken in the State ROW behind the Dauphin's property to show the view of the lake from their perspective. Phippard contends that the majority of the view is impeded by the vegetation that is on the Dauphin property and that it could be remedied by removing some of those trees. It was pointed out that the Paquette's had 2 small red maples on their property.

The Board toured the house first seeing the basement. It had been asked why not expand in that area. Phippard advised that there is a stone trench with a sump pump due to the wet nature of the basement. He also presented Building Codes Section R304 and R305. The minimum height requirement is 7 ft as noted in the code. The basement is less than that and wet. It was also suggested that they expand into the lot. The leach field is in the middle of the lot and the well is by the corner of the house. Their only option to expand is to build a dormer to get the usable bedroom space. Phippard pointed out the dormers on the east abutter and advised the neighbor on the west side is also dormered but it was not visible from the site due to the foliage.

The Board left the site and reconvened at the Town Offices. The meeting was reopened at 7:30 pm.

The Dauphins had sent a letter regarding their concerns with the dormer and deck. Copies of the letter were given to each Board member and Paquette and Bentley. The Board was given the opportunity to read the letter.

Letters were presented from abutters and neighbors in favor of the request; Trombly, Gatowski, Peterson and Donahue/Morrison.

Bentley stated as a comment to the Dauphin's letter that to the best of their knowledge they are not in violation of any ordinances. The Paquette's are here to seek a variance. There is no increase in the number of bedrooms. They have an approved 3 bedroom septic system.

Phippard advised that Ross had done investigation for the ZBA with regard to 503.1 and he wanted to make sure it was put into the record. Paquette had also done investigation and that was presented to the Board.

Phippard stated that the upstairs has limited habitable area due to the sloping roof. He presented the ZBA decision of February 13, 2001 for Linda & Ed Smith's request for a variance to permit a dormer which was granted by the Board. Their request is similar to the Paquette's.

Fales asked what the hardship is. Phippard stated that any expansion of the footprint would require a variance and would increase runoff. They had looked at this footprint. The basement only has a ceiling height of 6 ft 10 in where 7 ft 7 in is necessary (R305 note 7 ft is the minimum). The second story is 16 ft wide however, the habitable space with the 7 ft 7 in ceiling height is a 2 ft strip in the center of the house.

This application is for a minimum expansion with no increase in footprint or runoff. The purpose of 503.1 was to limit expanding in height and create more occupancy. The hardship is they have no other alternative to expand. It is reasonable to have a bedroom with closets.

Code requirement for 2nd story is that you need 2 means of egress; spiral stairway and an egress window or door to a deck. The deck is the best option due to Mrs. Paquette's condition. The code calls for a minimum of a 3 x 5 ft double hung window. It was noted that the down stairs bedroom would be the master.

Fales asked if this application is all or nothing; if we grant you the dormer but deny the deck. Perkowski stated we vote on the application before us. Perkowski stated there is already a roof to use as egress from the second story; it doesn't need to be a deck. A 10×10 ft deck would be within the setback area. Riendeau asked is the window presently there an egress window. Phippard stated no; it needs to be a double hung of sufficient size.

Bentley stated that the purpose of 503.1 is not to turn a 2 bedroom house into a 5 bedroom place or further burden the lot. This is to continue as a 3 bedroom with the bedrooms reconfigured. This is a reasonable use and does not go against the purpose of 503.1.

Riendeau stated regarding the Smith application that the approval was given as relief so a conforming stairway was allowed to access the 2nd floor. He asked if the spiral staircase is compliant to access a living space.

Step codes were discussed; 10" step with a 7 3/4" rise is required. These may be compliant but may be grandfathered. McKeon stated that if you renovate you must bring it all up to current code.

Bentley stated this would be a Greenwood issue. The approval could be conditioned that codes are met.

The Board opened the discussion up to the abutters. Steve Lewis of W Chesterfield stated that 2 died in a fire at an old MA farmhouse because there was no legal egress.

Fales moved to close the public portion. Perkowski seconded the motion; which carried unanimously.

Board discussion

Fales stated she has an issue with the deck on the roof. Perkowski stated he sees this in 2 issues; expansion with the dormers and the deck he does not see as a hardship. Two egresses would be satisfied by a bigger window. It would affect the view of the rear neighbor. The spiral staircase needs to be conforming to code. Larkin stated there are specific regulations for spiral stairs. Can it be grandfathered? Is it living space now; it's heated. His concern is the deck and that it is a leisure environment. An egress window of a certain size could be accommodated. He didn't think the stairs where a great escape in an emergency.

Cay asked if Dauphin's view is protected. Fales stated that if there was a view when he bought it and loses the view it would affect the value of his property.

Perkowski stated they have full use of the property when they bought it. It's as good and better then when they bought it. He is not in favor of the deck. Cay noted that the Board's approval would be conditional on conforming to building codes. Perkowski stated there is no hardship in the deck. If he had a deck he'd use it; put a table and chairs out there. Cay asked about the research that was done. Ross stated that out of 44 applications for Article 503.1, 33 were granted. It was noted that some of those granted only minor relief was given. McKeon asked if the applications were entirely in the setback. Paquette's is entirely in the setback only 1 ½ ft from the property line. Perkowski stated that we have denied expansion in a basement. Fales stated we've denied a basement and only allowed crawl space.

Riendeau read 601.2 points of a variance. He stated the function of our Board is to make a legal decision giving the property owner all the rights he is entitled to. He does not think this is a clear, cut and dry decision. When he read all the decision the thing that struck him was that the Board has granted requests when it seems to make sense and denied it when it didn't. We need to look at each application individually. The hardship is in the building. There is no other space to expand. Is it a hardship to not allow expansion? Larkin stated to add a closet would engulf the 2nd first floor bedroom. Moving the 2nd bedroom upstairs is reasonable. Perkowski stated there is a large bedroom in the 24 x 20 boat house with a bathroom. It was noted that Article 503.1 came into existence in 1992.

The 5 criteria were read. Perkowski asked if you have reasonable use. Fales stated it is the same use, the volume is changing. McKeon stated the house is useable as it is now. What are the special conditions of the property that distinguish it from other properties in the area? They can still have 3 bedrooms. Cay stated it seems reasonable use to have a bedroom with a closet. There is no doubt in his mind that there is hardship in the property. McKeon asked is a hardship what you want and don't

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have or is it the inability to occupy the space as it is. Cay stated it is what you want which needs to be a reasonable use; then looking at the property to see the options of doing it. If you have hardship you have reason to come to the Board. Cay stated this application is a poster child for a variance and he doesn't understand the Board's struggling with this. If there is resistance to the deck, you can condition it to help and protect the neighbor's view. That would be a compromise. Paquette has demonstrated hardship with professionals.

Fales move to approve the variance for Charles & Patricia Paquette from Article 203.5C, 203.6b and 503.1to add an expansion of the dormer on the second floor to the nonconforming structure; however, the deck is not included in this approval, just the rear dormer.

Criteria for approval:

- > The variance is not contrary to the public interest. Yes, the only neighbor who was against this variance was because of his concern with his view being obstructed. Without the deck over the roof of the sunroom, his view would not be obstructed.
- The variance will not be contrary to the spirit and intent of the ordinance will be observed. Yes
- > Substantial justice is done. Yes, the owners will still be maintaining the 2 bedrooms in the main house.
- The variance will not diminish the values of surrounding properties. Yes, there will be no changes of the roof with the dormer and without the deck the neighbor's view would not be obstructed.
- Literal enforcement of the ordinance would result in unnecessary hardship.
- (A) Because of the special conditions of the property that distinguish it from other properties in the area:
- (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. Yes, there is no place else on the property to expand. They cannot expand the footprint due to the septic and well locations and the size of the property.

 And
- (b) The proposed use is a reasonable one. Yes, it is reasonable to have bedrooms of decent size with closets. Currently there are 29 x 11 bedrooms without closets.

Perkowski stated in denying the deck, the roof line on the sunroom stays as it is. A conforming window would suffice for egress from the 2nd story. Cay stated that the door is undersized and there is no casing. Larkin stated that Greenwood would have some say on it to bring it up to code.

Cay asked Paquette about raising the roof to fix the doorway. McKeon stated the Board cannot open the public portion. Cay disagreed. It was noted that the reason to not open the public portion again is because if abutters had been present during the public portion and left when the public portion closed they would not have the benefit to hear the testimony given. There were no abutters present for this application this evening so the applicant was asked about being able to put in a standard size door. McKeon still disagreed that it should be opened back up for the question.

Cay stated raising this roof to accommodate a door to code shouldn't have impact on the neighbor. The proposal was to raise the ceiling height to 7 ft 5 ¼ in. Would Fales agree to that height? She would. Perkowski stated if you don't alter the roof the door would stay as it is.

Fales moved to amend the motion to include: **The Board further will allow the sunroom ceiling** height to be 7 ft 5 ½ in to accommodate a standard size door and frame accessing the room subject to the roof requirements as determined by the Code Enforcement Officer.

Larkin seconded the amended motion.

The vote was called.

The motion was seconded and carried by majority vote. (3 Yes: Larkin, Fales & Cay – 2 No: Perkowski & Riendeau)

2. Benjamin Mowatt requests a Special Exception under 204.3 A, Home Occupations for Article 402.4 to operate a business for processing of consumer credit applications. There are 5 non-resident employees. The property is located at 253 Pond Brook Rd, W Chesterfield, NH 03466 (Map 13 Lot H5) Rural Agricultural district. Continued from March 19th meeting.

Mowatt was not present.

Perkowski moved to push this off until later in the evening. Cay seconded the motion, which carried unanimously.

Fales moved to deny the application because at the last meeting Mowatt advised he has 5 non-resident employees where only 3 are allowed. This does not meet the criteria for 204.3.

Perkowski seconded the motion; which carried unanimously.

3. Charles & Elaine Belawske request a variance from Articles 203.6b Section A, Road Setback, 203.6a Section A, Single Family Dwellings and 503.1, Expanding Nonconforming Building, to permit rebuilding the house as a duplex within the front setback. The property is located at 36 Canal St, Spofford (Map 6A Lot B7) Residential/Spofford Lake district. Continued from April 9th meeting.

Voting members for this application will be Cay, Davenport, Fales, Evans and Larkin.

Belawske presented a survey of the lot showing that 2 ft of the corner of the house would be in the 500 ft of the Spofford Lake District. There is an approved 4 bedroom septic.

David Lewis was present with Belawske. It was noted that the building could be shifted 2 ft away from the 500 ft. Lewis stated this house had been a duplex at one time and was converted to a single family about 16 years ago. He pointed out the apartments across the road and next door is a duplex that is closer to the lake. It was noted that a two family dwelling requires 4 acres under Article 203.4 A, Lot Area. The lot is only .73 acres with 206.25 ft of road frontage.

Fales asked what the hardship for this application is. Lewis stated that it had been a duplex; there is a duplex next door and the apartment building across the road. Pictures were presented of the existing house.

Cay stated that the applicant had demonstrated that a small portion of the house is in the Spofford Lake District with the survey. The remainder of the lot is in the Residential District. The duplex is not grandfathered because it was changed 16 years ago; the grandfathering has expired. A duplex needs 4 acres and 300 ft of frontage. This lot has less than an acre.

Cay stated that if you review the record, the apartments are not conforming. Lewis stated that seeing that those exist, why the Board can't grant this also. Belawske bought the property for this purpose. Cay asked how patient Belawske was. The area may qualify for rezoning either by PDD or zoning change. Belawske stated that it is more economically feasible to have a duplex. McKeon stated that if there are illegal uses shouldn't we send it to the Code Enforcement Officer. It was noted that the Board is judicial. Cay stated we will take it up in deliberation. Perkowski stated that if it weren't a duplex the Board could address the setback issues for a variance.

Fales moved to close the public portion. Evans seconded the motion; which carried unanimously.

The Board noted that they have lost the duplex grandfathering. The required acreage is not there and the Board does not see hardship.

Fales moved to deny the variance application for Charles and Elaine Belawske for 203.4 to have a duplex on his lot on Map 6A Lot B7 at 36 Canal St, Spofford. The lot requirement for a duplex is 4 acres and 300 ft of frontage. This lot has .74 acre and 206 ft of frontage. He is still able to build a single family dwelling but because the house was converted from a duplex to single family 18 years ago, the grandfathering has expired.

Criteria for approval:

- The variance is not contrary to the public interest. No
- > The variance will not be contrary to the spirit and intent of the ordinance. No, the ordinance was created for use and the use would be changed because of the lack of acreage it does not meet the spirit and intent.
- > Substantial justice is will not be done. No, by denying the variance he would lose the duplex rental but he can't meet the ordinance. He would be allowed to build a single family home.
- The variance will not diminish the values of surrounding properties. **No**
- Literal enforcement of the ordinance would result in unnecessary hardship.
- (A) Because of the special conditions of the property that distinguish it from other properties in the area:
- (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. **No**And
- (b) The proposed use is a reasonable one. No, he still has reasonable use of the property to build a single family home.

The motion was seconded and carried unanimously.

The Board agreed that if Belawske comes back within 90 days the fee would be waived.

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Cay asked what the likelihood was that he'd come back to get a single family home. Belawske stated he may but needed time to think about the economic ramifications.

4. Jacob Wolhart requests a Special Exception under Article 203.3 Section A, Home Occupation for Article 402.3 Professional Uses and customary Home Occupation to permit a dealer and manufacturer of firearms and related accessories. The property is located at 368 Old Chesterfield Rd, Chesterfield (Map 12A Lot A3.1) Residential district.

A letter was presented to the Board for a neighbor down the road, Renate Gebauer. She is against granting the Special Exception for noise, safety and traffic concerns.

Wolhart stated this is the same type of permit he had in Saratoga Springs, NY. He is requesting the same type of permit he had in NY. He stated he would be building a garage as his workshop and until then would use his basement. In anticipation of questions he noted the following:

- There will be no signs.
- Last year he had 16 people come to his house in NY for the business.
- There will be no business related shooting.
- Firearms storage Federal regulations require a secure storage with a key locked area. He would be the only key holder.
- With regard to traffic, there may be 2-3 cars/delivery trucks per month.
- With regard to values; his property value went up in NY.
- Distances to the school Federal requirements are 1,000 ft and he is ½ mile from the school.

Perkowski asked what kind of firearms. Wolhart sated he has a standard dealer license for manufacturing arms; assembling. He sold 16 guns last year and had 12 - 13 transfers. The license allows him to receive arms in the mail to release to buyers to make sure that the paperwork and back ground checks are done. He stated this is more like a hobby as he has a full time job.

McKeon asked why not go for 402.2 level of Home Business. He stated he did; however, Carrier was requiring him to seek a level that would give abutters a chance to voice concerns in light of the Hodgkins application in 2007. It was noted that Hodgkins is a higher intensity business. Perkowski stated he could comply with 402.2 as there is no signage, very few deliveries and few on site customers.

Wolhart stated he does shoot personally like some of his neighbors. He never test fired last year. There would be no commercial discharge. State laws say 15 ft from the road and don't shoot over the road. You must be 300 ft from a building when you are on someone else's property. Larkin stated he had concerns with the school. Wolhart stated he has walked his property. There is a 40 acre land locked lot behind him. He stated that any projectiles would stay on his property.

Wolhart has no commercial ammo storage. His hours of operation in NY were 6-8 pm Thursday and Friday and 8 – noon on Saturday. You need to have established hours as ATF can come in during the hours of operation to do inspections. This is 8 hours/week of published hours. The business work bench would be in the new garage. He has advertised in dealer listings on the internet but mostly uses auction listing.

When asked if he could do out of state sales he answered yes; but he would need to comply with both state's laws.

The meeting was open to the public for comment. Mark Fryberger, abutter, stated that whatever happens here we are neighbors. We want to live in peace and quiet. Shooting is disruptive even if it is personal. He would like to come up with a reasonable compromise. Fryberger asked how the Board responds to Special Exception requests. It was noted that Special Exceptions are easier to get than variances. Fryberger asked if he could grow his business out of a home business. The Board explained he can expand as long as it conforms to the ordinance; number of employees, level of intensity of use.

Fryberger asked what the related accessories were noted on the application. Wolhart stated he owns an LLC for his business. When asked if ATF had inspected him in NY Wolhart stated they come in to inspect your forms. Are there any liability insurance requirements? Wolhart stated no, if a gun were stolen the thief is guilty not the owner if a crime is committed. There will be no customer shooting on the property. There is no term for a permit. Private shooting ranges are allowed; no customers will be shooting.

Fryberger asked the Board about the criteria in interpreting "injurious or detrimental". This is not defined. Riendeau stated that the Board interprets it on its own.

Noel Spear, concerned parent with children in school, asked that the application be denied. A gun manufacturing business should not be near a school. His concerns were 1) there are no limitations to the business, 2) there is no condition placed on shooting and 3) gun stores are not typical of businesses listed under Article 402.3.

It was noted that the lot is 26 acres.

Antje Hornbeck read her statement. She stated the houses are 200 - 300 ft apart. They bought the house a decade ago. If this was next door to them they would not have bought the property. She stated that on her property they could be 20 yards away from the shooting and that is limiting their use to their property. A weapons business is inappropriate to a residential district. She asked what a residential district is for if this is allowed. Why should they suffer to allow someone new to make some money?

Jon McKeon stated he would like to clarify an earlier statement of Wolhort's. Any shooting must be 300 ft from any occupied dwelling.

Bruce Platt, resident, and school board member was concerned for securing the school. Extra tax dollars would be needed for costs to increase security at the school.

Amanda Fryberger, abutter, stated that noise travels. She can hear the kids from school and the Wolhart's are closer to the school. The children would be able to hear shooting. The children have been removed from the playground and would lose recess time. Children who live within a mile from the school are not bused and could be walking past this house. Wolhart stated that he works 7:30 to 4:30 pm at his full time job.

Ken Woodward stated he owns the 46 acre lot behind Wolhart and was concerned about safety. Wolhart stated he shoots downhill into a dirt bank with targets. He can tell where the bullets hit. The bullets do not go off his property.

Bonnie Chamberlain, neighbor on Jackson Hill Rd, stated she is concerned that we'd have unwanted people in our neighborhood. Lisa Weidenheimer stated that she has heard shooting from the Hodgkins' property for 2 straight hours. They are not good neighbors and they don't respect others. We shouldn't have this in residential neighborhoods.

Riendeau clarified this is a Special Exception (SE). A variance has a higher burden of proof. The Board verifies the SE points and if they meet the criteria it is granted. As a Board we can't deny it legally if it conforms.

Perkowski stated that apart from the business he can legally shoot on his property. So that noise would remain. Riendeau stated that no matter where we are people shoot. He noted he lives on Sugar Maple Ln and there is shooting there too. Cay stated that the Home Business doesn't allow for outside activities so there would be no commercial shooting allowed.

Marty Mahoney, abutter, stated he had spoken with Ross and Chief Fairbanks. There are 10 - 12 licenses that have been issued. He asked 1) to what extent were similar activities approved by this Board and having reviewed the regulations for this, it seems the central concern is the "character of the neighborhood". How would this impact the character of the neighborhood?

Riendeau stated the concern is Wolhart's personal use of firearms. No concerns have been voiced about his business of sales. Stopping the business will not stop his ability to shoot. Mahoney stated that one issue is controlled by a regulation and one is not controlled except what we enforce ourselves. Barbara Mahoney stated when someone buys a gun doesn't he want to test it. Riendeau stated Dick's doesn't allow shooting behind the store.

Rob Hodgkins had applied to the ZBA for his firearms shop. He stated he had a one year time restraint. They had test fired in MA but that situation went away. They came back to the Board and were allowed to build a berm range. He stated that personal responsibility was important.

Tom Woodman, abutter stated that he can hear shots up the road. It seems Wolhart has satisfied his questions on the business. Wolhart has a right to shoot. It is his prerogative to do it. He seems like an upright individual and hopefully he'll respect his neighbors.

Fales asked if you change your license to do higher power arms what would be affected. Wolhart stated that there is no difference in power but there is a difference in automatic features. The number of bullets or speed of power wouldn't affect his business if it's not being fired on the property.

Fryberger stated that he thinks this would be injurious or detrimental to the values of the property.

Perkowski move to close the public portion. Fales seconded the motion; which carried unanimously.

Discussion

Perkowski stated Wohart is applying for a Home Occupation and he can't see how we can deny it. What we heard was complaint with the discharge of firearms. Does it change the character of the neighborhood or is it injurious or detrimental? The business doesn't bring in the discharge of firearms; that is a personal right and saying no to the home business does not stop the discharge of firearms. Larkin stated we should have the conditions in writing for operation hours and no business related shooting.

It was noted that Rob Hodgkins stated this evening that he put in a firing range. That was not permitted in the approval. This will be brought to Greenwood's attention.

Perkowski moves to approve the application for Special Exception under Article 203.2 as applied for. His hours of operation will be 6-8pm Thursday and Friday and 8 am - noon on Saturday. The Board asked for a copy of his license that has his hours noted. There will be no signage. The approval is based on the criteria for Special Exception as follows:

In evaluating this Special Exception we find that it is authorized under Article 2 of Section 601.3.

- A. The special exception is specifically authorized by Article II of this ordinance. Yes
- B. The proposed use will not be injurious or detrimental to the neighborhood. Yes
- C. Any special conditions required by Article II, Article III or Article V will be complied with. Yes
- D. The proposed use will not make an excessive demand on municipal services. Yes
- E. The proposed use will not generate traffic volumes that will overburden existing roads and streets. Yes
- F. The proposed use will not have an adverse impact on the natural environment. Yes

Davenport seconded the amended motion; which carried by majority vote. (3 Yes – 2 No)

5. Jon McKeon to discuss the ZBA's decision with regard to permeable pavers.

McKeon was present to discuss the ZBA's decision regarding the permeable pavers. He stated the Planning Board has an issue with the decision as we understand it. We see it as being in direct conflict with the impermeable coverage definition which includes "manmade alterations to the natural surface of the land...." In order for pavers to perform as they are supposed to, they must be installed correctly with consideration of the sub grade. How do you monitor that? Who would be doing the inspection? There should be some thought to it. It is in conflict to the ordinance. Cay stated it doesn't go against the ordinance; pavers are incredibly permeable. We can't grant carte blanche; it has to be reviewed by the Planning Board; if the Planning Board buys the presentation. McKeon stated the Planning Board is not comfortable with this.

Evans stated that if there is proper engineering it could be done on a case by case basis. Cay stated it seems Dave Bergeron's presentation seemed reasonable. McKeon stated because he is selling it. Cay advised if the PB doesn't want to do it, don't. The ZBA gave an advisory opinion and gives the Planning Board the option. Cay asked what would the Planning Board like us to do about it. McKeon stated they would like the ZBA to take it back and think about it more. It was noted that the Town has to decide if it has merit or not; if it has merit it would go into the ordinance. The ZBA

discussion will be tabled until the issue is brought back to the PB. McKeon agreed so that the PB could address it in the ordinance. Riendeau stated that new products are driving changes.

6. Review April 9, 2013 Meeting Minutes and April 23, 2013 Site Visit Minutes

Fales moves to approve the April 9, 2013 Meeting Minutes and April 23, 2013 Site Visit Minutes. Larkin seconded the motion; which carried unanimously.

8. Adjourn:	The meeting adjourned at 12:05 pm.
Respectfully s Carol Ross Secretary	submitted,
Approved	
Burton Riend Chairman, Zo Date	eau ning Board of Adjustment